

Chapter LII.

PUNISHMENT OF MEMBERS FOR CONTEMPT.

1. Parliamentary law as to assaults between Members. Section 1641.
 2. Various instances of assaults and duels. Sections 1642–1664.
 3. Censure of two Senators for Assault. Section 1665.
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1641. The parliamentary law as to treatment of Members between whom warm words or an assault have passed.—Chapter XVII of Jefferson's Manual provides:

Whenever warm words or an assault have passed between Members, the House, for the protection of their Members, requires them to declare in their places not to prosecute any quarrel (3 Grey, 128, 293; 5 Grey, 280); or orders them to attend the Speaker, who is to accommodate their differences and report to the House (3 Grey, 419); and they are put under restraint if they refuse or until they do. (9 Grey, 234, 312.)

1642. The attack of Matthew Lyon on Roger Griswold, in 1798.

An early instance wherein a Member in secret session informed the House of a breach of privilege occurring on the floor between two other Members.

While the House was investigating a difficulty between two Members it declared that it would be considered a high breach of privilege if either should enter into a personal contest pending decision.

Instance wherein testimony as to a difficulty between two Members was heard in Committee of the Whole.

On January 30, 1798,¹ while the House was concluding balloting for managers on the impeachment of William Blount, a Member in his place, Mr. Samuel Sewall, of Massachusetts, informed the House that he had a communication to make, which he conceived ought to be kept secret. When the House had been cleared Mr. Sewall stated that he had been informed, in a manner which, in his opinion left no doubt of the truth of the fact, that, in the presence of the House, while sitting, Mr. Matthew Lyon, a Member from Vermont, did this day commit a violent attack and gross indecency upon the person of Mr. Roger Griswold, of Connecticut, another Member of this House.

The House having decided that it was not necessary to keep the matter secret the doors were opened and the House considered this resolution:

Resolved, That Matthew Lyon, a Member of this House, for a violent attack and gross indecency committed upon the person of Roger Griswold, another Member, in the presence of this House, while sitting, be, for this disorderly behavior, expelled therefrom.

¹First session Fifth Congress, Jonathan Dayton, of New Jersey, Speaker; Journal, pp. 154, 185; Annals.] , pp. 961, 964, 972, 979, 1034.

It was voted—49 yeas to 44 nays—that this resolution be referred to a Committee of Privileges, with instructions to inquire into the matter and report.¹

Messrs. Thomas Pinckney, of South Carolina; Abraham B. Venable, of Virginia; John W. Kittera, of Pennsylvania; Isaac Parker, of Massachusetts; Robert Williams, of North Carolina; James Cochran, of New York, and George Dent, of Maryland, constituted this committee.

The House also came to the following resolution:

Resolved, That this House will consider it a high breach of privilege if either of the Members shall enter into any personal contest until a decision of the House shall be had thereon.

An attempt to amend by requiring Mr. Lyon to be considered in custody of the Sergeant-at-Arms was defeated—62 yeas to 29 nays.

On February 1 a letter of regret, apologizing for his conduct, was received from Mr. Lyon and referred to the Committee on Privileges.

On February 5 the report of the Committee on Privileges was committed to a Committee of the Whole House. It was also voted that the Committee of the Whole House be authorized to hear the testimony of witnesses on the subject-matter of the report. The propriety of considering the case in Committee of the Whole House was considered. It was objected that the committee might come to a conclusion which two-thirds of the House might not acquiesce in, as was the case in fact. On the other hand, it was urged that the Speaker might more conveniently give his testimony in committee than in the House.

1643. The case of Matthew Lyon, continued.

Members, testifying in the case of Matthew Lyon who was threatened with expulsion, were sworn and cross-questioned by Mr. Lyon.

The House declined to expel either Matthew Lyon or Roger Griswold for an affray on the floor of the House.

After their affray on the floor, Messrs. Lyon and Griswold were required to pledge themselves before the Speaker to keep the peace during the session.

Early instance wherein testimony in a case of breach of privilege was heard before a select committee.

On February 12 the Committee of the Whole House arose and, on rising, the chairman, by direction, reported the testimony of several Members of the House and one Member of the Senate and also their agreement to the resolution of expulsion.

The testimony related to the affray, and from it it appears that Mr. Griswold in the course of the altercation taunted Mr. Lyon with an alleged occurrence in his army record, whereupon the latter spat in his opponent's face. Each Member was put under oath, the judge of the district court administering the oath, before giving his testimony, and after he had given it was cross-questioned by Mr. Lyon. The testimony and cross-examination of each Member was reported to the House and printed in the Journal. The Speaker and one Senator were among the witnesses. The affair took place during the counting of ballots, when it was the habit of the Speaker to leave the chair and for Members to gather informally in groups, although the House

¹ On April 17, 1850 (first session Thirty-first Congress, Globe, pp. 763,769) the Senate referred to a select committee the subject of an affray between Senators Benton and Foote on the floor of the Senate.

was considered as in session. The Speaker, in his testimony, said he frequently left the chair for exercise during the counting of ballots and the reading of lengthy communications. Mr. Lyon based his defense on the fact that the House was apparently not in session.

When the House came to vote, a proposition that Mr. Lyon be censured by the Speaker was defeated by a vote of 52 to 44. Then the resolution of expulsion was voted on, there being 52 yeas and 44 nays. So the resolution failed, two-thirds not voting therefor.

On February 15, after prayers, while the Speaker was in the chair and before the Journal was read, Mr. Griswold assaulted Mr. Lyon with a stout cane, the latter being seated, writing. Mr. Lyon got the tongs from the fireplace, and there was an affray, which was with difficulty stopped. The House was so excited that it adjourned presently, no notice being taken of the affair. The next day a resolution was introduced to expel both Members. Then an order was passed that both Messrs. Lyon and Griswold be required to pledge themselves to keep the peace during the session. This they did before the Speaker. The motion to expel was referred to the Committee on Privileges.

In this case the Committee on Privileges were directed to take the evidence, which they did, reporting it to the House February 20. They also reported that the resolution expelling the two Members should be disagreed to.¹ The report of the Committee on Privileges was agreed to—73 yeas to 21 nays. A motion that the Members be censured failed.

1644. The question of privilege arising from the duel between Jonathan Cilley and William J. Graves.

A Member who had in a hostile manner sent to another Member a demand for explanation of words spoken in debate, was held by a committee of the House to have violated privilege.

A committee being directed to investigate the death of a Member in a duel, they reported resolutions for punishment of other Members concerned, although not directed by the House to proceed against them.

The House in 1836 neglected to punish by expulsion or censure the surviving principal and his seconds in a duel arising over words spoken in debate.

Members who had been concerned in a duel which resulted in the death of a Member were permitted to attend and cross-examine witnesses during the investigation.

In 1838 the principle that a question of privilege might be introduced at any time was not fully developed (footnote).

On February 28, 1838,² Mr. John Fairfield, of Maine, moved the following resolution:³

¹ On February 22, 1799, an attempt was made to expel Mr. Lyon, but it failed.

² Second session Twenty-fifth Congress, James K. Polk, of Tennessee, Speaker; Journal, pp. 501, 502, 811, 858, 860, 861; Globe, pp. 200, 201, 320, 329, 494.

³ Mr. Fairfield brought this resolution in under a suspension of the rules. He first tried unanimous consent, and there was objection. The idea of presenting the matter as a question of privilege does not seem to have been broached (Journal, p. 501; Globe, p. 200). So, also, on April 21, the rules were suspended to enable the report to be made to the House (Journal, p. 811).

Resolved, That a committee consisting of seven Members be appointed to investigate the causes which led to the death of the Hon. Jonathan Cilley, late a Member of this House, and the circumstances connected therewith; and further, to inquire whether there has been, in the case alluded to, a breach of the privileges of this House.

This resolution was adopted by a vote of 152 to 49. The following committee were appointed: Messrs. Isaac Toucey, of Connecticut; William W. Potter, of Pennsylvania; Franklin H. Elmore, of South Carolina; Andrew De W. Bruyn, James Rariden, of Indiana; George Grennell, jr., of Massachusetts, and Seaton Grantland, of Georgia.

The committee reported ¹ April 21, 1838. The majority of the committee in their report recite that the late Jonathan Cilley fell by the hands of William J. Graves, a Member from Kentucky, in a duel fought with rifles, near the boundary line between the District of Columbia and the State of Maryland, on Saturday, the 24th of February. The New York Courier and Inquirer had published an article, vouched for by the editor, James Watson Webb, charging corruption upon a Member of Congress. Mr. Cilley, in moving for a committee of inquiry, had made statements on the floor of the House reflecting upon the character of Webb. For this the editor had sent to Mr. Cilley a note by the hand of Mr. Graves. This Mr. Cilley had refused to receive, and then, after further correspondence, a challenge was sent by Mr. Graves to Mr. Cilley.

In the examination before the committee Mr. Graves and the seconds, Messrs. Wise and Jones, as well as others concerned, were permitted to attend and examine and cross-examine witnesses. The report of the committee (as distinguished from minority views) states that the inquiry was directed to one object only, the maintenance of the privileges of the House. Then follows a long and minute analysis of the evidence, followed by the conclusion that the words spoken by Mr. Cilley in debate, his refusal to receive a demand for the explanation of those words, and his refusal to assign for this other reason than that he chose to be drawn into no difficulty upon the subject were the causes which led to the death of Mr. Cilley. Therefore the committee were of the opinion that there had been a breach of the privileges of the House in thus demanding in a hostile manner an explanation of words spoken in debate. This was the highest offense that could be committed against either of the Houses of Congress. The committee therefore reported resolutions expelling Mr. Graves from the House and censuring Messrs. Henry A. Wise, of Virginia, and George W. Jones, of Tennessee, who had acted as the seconds in the duel. As it had been decided on a former occasion that it was a breach of privilege to send a challenge to a Member in attendance or to be the bearer of such a challenge, it seemed also to be equally a breach of privilege to act as a second.

Mr. Grennell and Mr. Rariden did not concur in the report, but filed their views. They took the ground that there were two objects of the investigation—an inquiry into the circumstances with a view of arousing public sentiment on the subject of dueling, and an inquiry as to whether the privileges of the House had been violated. The majority would have fulfilled the first object had they simply gathered the testimony and presented it without comment. In going beyond this to comment and argue and make deductions they had exceeded their duties. The two Members con-

¹ House Report No. 825, second session Twenty-fifth Congress.

curred with the majority in finding that a breach of the privileges had been committed both by principals and seconds, and that the offense of the surviving principal was of a high and aggravated character. But the two Members believed that the committee could not proceed to advise the House as to the sentence to be inflicted. Such a step would be like a grand jury recommending the kind of punishment in the indictment. Dueling had been frequent among Members of Congress. In 1809 a rule was proposed to the House declaring the sending of a challenge to duel by one Member to another a breach of the privileges of the House, but the rule was not adopted. The gravamen of this affair rested in the sending of the challenge and not in the fatal result, which did not change the offense against the privileges of the House. The two Members therefore recommended a law and a rule of the House against dueling, but no punishment of the offenders.

Mr. Elmore also filed his views. He took the ground that the collecting of the testimony as to the facts was the whole duty of the committee, without commenting upon those facts, except as the question of privilege was involved. The privileges of Members of Congress were not personal or private rights, but public trusts, assigned to the station and office, for great public purposes and utility. They were the privileges of a multitude of persons in whose room and place the Member is specially chosen. The privilege of a Member not being his own, but belonging to his constituents, the House, and the country, it is his duty to maintain and assert it, and if he waive or surrender it he commits himself a breach of the privileges of the House. The right of self-protection was an inherent privilege in every legislative body. Without any other authority the Revolutionary Congress punished one individual for sending a challenge to a Member of its body and compelled another to apologize for impeaching the honor of a Member in a memorial. The privilege under the Constitution which forbade a Member to be questioned in any other place for any speech or debate in either House was perhaps higher in nature than any other. It was for this privilege that the Commons of England made their memorable resistance to the tyranny of James I. In the case of the duel under consideration there could be no doubt that this privilege had been invaded. As to the punishment, the Supreme Court, in the case of *Anderson v. Dunn*, had affirmed the right of the House to imprison. To deprive the House of the right to punish for breach of privilege would be to deliver it over to disorder. But Mr. Elmore did not concur in recommendations for punishment, since that recommended for Mr. Graves seemed too severe. Dueling by Members of the House had been frequent and generally unnoticed and unpunished by the House. Mr. Graves had been negligent of the privileges of the House, but did not intentionally offer an indignity to it. Therefore he did not merit the heaviest punishment.

When the report and the minority views were brought in the request was made that they be printed and the consideration postponed until May 7. This precipitated a debate of considerable length. Mr. John Robertson, of Virginia, quoted Jefferson's Manual¹ in support of his contention that when the course of an investigation showed that any Member was implicated it was the duty of the committee to report that fact specially to the House, whereupon the Member is heard at the

¹ See sec. 1264 of this volume.

bar of the House, or a committee is specifically empowered to inquire concerning him. Mr. Elmore replied that the committee were peremptorily ordered by the House to make the investigation which they had made, and if the objection was valid it should have been made when the resolution was before the House. Mr. John Bell, of Tennessee, raised the question whether it was proper for the committee to proceed against a Member without being directed to do so by name. It was replied that when the resolution was adopted it was notorious that Members were implicated. In his opinion, Jefferson's Manual referred to a case where, in an investigation, a Member was incidentally charged. Mr. John Quincy Adams, of Massachusetts, criticised the report and said he intended to move to strike out the resolutions and argumentative part and let the facts be considered by the House. In his opinion the committee had transcended their powers. He was for a strict construction of Jefferson's Manual, and cited the case of Hon. John Smith in the Senate.¹

After a parliamentary struggle of considerable intensity, on May 10 the whole subject was laid on the table and the reports and testimony were ordered printed. The motion to lay it on the table passed, 103 to 78.

July 4 an attempt to take up the report failed.

1645. A resolution for the investigation of an alleged assault of one Member on another at a place outside the Capitol was admitted as of privilege.

A violation of the personal security of a Member on his way to the House to attend a session was considered by a committee of the House a breach of privilege.

On August 18, 1856,² Mr. George A. Simmons, of New York, presented as a question of privilege, the following resolution:

Resolved, That a committee of five be appointed to investigate the alleged assault on the Hon. Amos P. Granger, a Representative from the State of New York, by the Hon. Fayette McMullin, a Representative from the State of Virginia, on the morning of the 18th instant, and that they report their action to this House on the second Monday in December next.

Mr. Howell Cobb, of Georgia, made the point of order that the resolution did not involve a question of privilege.

The Speaker³ overruled the point of order.

The committee was composed of Messrs. Simmons; William Smith, of Virginia; John U. Pettit, of Indiana; John R. Edie, of Pennsylvania, and Thomas J. D. Fuller, of Maine.

On August 26, 1856,⁴ the committee made their report.⁵ This report showed that the two Members were in an omnibus on their way to the Capitol when they became involved in a controversy over the prospective failure of the army appropriation bill. There seems to have been no doubt that words led to an assault in which Mr. Granger suffered some injury. The majority of the committee, Messrs.

¹ First session Tenth Congress, July 8, 1797.

² First session Thirty-fourth Congress, Journal, pp. 1527, 1589; Globe, p. 2238.

³ Nathaniel P. Banks, of Massachusetts, Speaker.

⁴ Second session Thirty-fourth Congress, Journal, p. 1589; Globe, p. 33.

⁵ Report No. 1, second session Thirty-fourth Congress, bound in vol. 3 of reports or first session Thirty-fourth Congress.

Simmons, Pettit, and Edie, who made the report, came to the conclusion that the assault was a breach of the privileges of a Member of the House and of the House itself. The rights of the Members to personal security in coming from their boarding houses to the sessions at the Capitol were as clear and perfect as when debating on the floor, and this, too, without regard to the question whether a Member is assaulted or beaten in his special character as a Member of Congress or otherwise. In view of the mitigating circumstances of the case, however, the report recommended that no action be taken. Both report and resolution were laid on the table in the House.

1646. From Members between whom warm words or an assault have passed on the floor, the House has exacted apologies.—On January 16, 1838,¹ Mr. William C. Dawson, of Georgia, arose and said that he had waited to hear from some older Member a proposition in regard to what had occurred at this session between two Members of the House. But none being presented, he had drafted, in accordance with parliamentary usage, a resolution to prevent the recurrence of such scenes. He then submitted the following:

The Hon. Samuel J. Gholson, a Member of this House from the State of Mississippi, and the Hon. Henry A. Wise, a Member from the State of Virginia, having spoken language subject to the censure of this House, because in violation of its rules:

Be it therefore resolved, That those gentlemen do now make submission to this body.

Messrs. Gholson and Wise then made statements, each apologizing to the House, but withdrawing none of the statements made concerning one another.

The resolution was laid on the table on motion of Mr. Charles F. Mercer, of Virginia, who thereupon submitted the following:

Resolved, That Messrs. Gholson and Wise, Members of this House, between whom warm words have passed in debate, be required by the Speaker to declare in their places that they will not prosecute further the quarrel which has arisen this day between them.

This resolution was debated, and on the succeeding day was laid on the table, yeas 127, nays 63.

1647. On March 10, 1848,² during a vote by tellers, a personal conflict occurred between two Members, Hugh A. Haralson, of Georgia, and George W. Jones, of Tennessee. Great confusion and disorder was produced in the Hall.

Order being restored, the question was put on the pending motion.³

The result having been announced, Mr. Jones and Mr. Haralson severally apologized to the House for the breach of order committed by them and submitted themselves to its pleasure.

Mr. Jacob Thompson, of Mississippi, offered this resolution:

Resolved, That a select committee of five Members be appointed, who shall inquire into and report to the House the facts in relation to the personal rencontre on the floor of the House during its sitting, today between the Members from Georgia and Tennessee, the honorable Messrs. Haralson and Jones; and, also, what proceedings in their judgment are necessary for the vindication of this dignity of the House.

¹ Second session Twenty-fifth Congress, Journal, pp. 290, 293; Globe, p. 107.

² First session Thirtieth Congress, Journal, pp. 536–539; Globe, pp. 453–456.

³ Mr. Alexander D. Sims, of South Carolina, raised the question that the intervention of other business would preclude the House from taking up the breach of privilege; but Mr. Speaker Winthrop decided that such would not be the case. (Globe, p. 453.)

Mr. Alexander H. Stephens, of Georgia, moved that the resolution be laid on the table, which motion was decided in the negative.

After debate, Messrs. Jones and Haralson severally apologized to each other, giving assurances that the quarrel should not be further prosecuted and a reconciliation took place between them in the presence of the House.

Having voted down an amendment empowering the committee to inquire what action might be taken to prevent similar occurrences, the House, by a vote of 77 yeas to 69 nays, agreed to an amendment proposed by Mr. Stephens, whereby the resolution was modified to read as follows, and the modified resolution was then agreed to:

The gentleman from Georgia, Mr. Haralson, and the gentleman from Tennessee, Mr. Jones, having apologized to the House for the breach of order committed by them during the sitting of the House today:

Resolved, That said apology be accepted by the House, and that no further proceedings be taken in relation thereto.

1648. In 1838, in case of great disorder in Committee of the Whole, the Speaker took the Chair “without order to bring the House into order.”

Warm words and an assault having passed between two Members; in the Committee of the Whole, the House required them to “apologize for violating its privileges and offending its dignity.”

On June 1, 1838,¹ the House, in pursuance of the order of the day before, resolved itself into the Committee of the Whole House on the state of the Union (Mr. Benjamin C. Howard, of Maryland, in the chair) and proceeded to the consideration of the bill making appropriations for preventing and suppressing Indian hostilities for the year 1838, etc., and after some time spent therein, warm words and an assault passed between two Members—Messrs. John Bell, of Tennessee, and Hopkins L. Turney, of Tennessee—and great heat and confusion arising, and the committee being in great disorder, the Speaker took the chair.

Whereupon, order being restored, the Speaker² told the House “he had taken the chair without an order, to bring the House into order,” and cited as authority for this course the parliamentary law as laid down in Jefferson’s Manual, which, by a rule of the House, is made the law of the House.

And immediately thereafter Mr. Henry A. Wise, of Virginia, moved that the House do again resolve itself into the Committee of the Whole on the state of the Union, for the purpose of resuming consideration of the pending bill, when a motion was made by Mr. Charles F. Mercer, of Virginia, that the House do come to the following resolution:

Resolved, That warm words and a mutual assault having passed between two Members of this House, viz, John Bell and Hopkins L. Turney, of the State of Tennessee, they be called upon by the Speaker to declare in their places that they will not prosecute any quarrel.

This resolution being read, it was, on motion of Mr. William W. Potter, of Pennsylvania, laid on the table. Mr. Isaac S. Pennybacker, of Virginia, then submitted the following:

¹Second session Twenty-fifth Congress, Journal, p. 1013; Globe, p. 422.

²James K. Polk, of Tennessee, Speaker.

The Hon. Hopkins L. Turney and the Hon. John Bell having violated the privileges of this House by assaulting each other in the House whilst sitting, it is, therefore,

Resolved, That the said Hopkins L. Turney and John Bell do apologize to the House for violating its privileges and offending its dignity.¹

A motion by Mr. Archibald Yell, of Arkansas, that this resolution do lie on the table was defeated, 155 to 21.

And thereupon, before the question was put on the resolution. Mr. Bell and Mr. Turney voluntarily and severally made submission to the House, and apologized for the breach of its order and decorum, and contempt of its authority by them committed. Thereupon, on motion of Mr. William Taylor, of New York, the resolution of Mr. Pennybacker was laid on the table. The House then went into Committee of the Whole House on the state of the Union.

1649. In 1840 great disorder occurred in Committee of the Whole, whereupon the Speaker without order took the chair and restored order.

Two Members, having assaulted one another in Committee of the Whole, the House declined to permit the Committee to resume its sitting until a committee to investigate the facts of the disorder had been appointed.

A committee appointed merely to ascertain facts, considers itself without authority to submit a recommendation to the House.

On April 21, 1840,² while the House was in Committee of the Whole House on the state of the Union, warm words and an assault passed between two Members—Mr. Rice Garland, of Louisiana, and Mr. Jesse A. Bynum, of North Carolina—and great heat and confusion arising, and the committee being in disorder, the Speaker³ took the chair and brought the House to order.

Mr. John W. H. Underwood, of Georgia, thereupon moved the following resolution:

Resolved, That a committee of five be appointed to investigate the facts relative to the disorder and personal violence which has just taken place between two of its Members, viz, Rice Garland and Jesse A. Bynum, and that said committee have power to send for persons and papers, and that said committee report with all practicable dispatch the facts of the case.

The resolution was adopted, and Messrs. Underwood, William O. Butler, of Kentucky, George N. Briggs, of Massachusetts, Nathan Clifford, of Maine, and Mark A. Cooper, of Georgia, were appointed the committee. It was ordered that the committee have leave to sit during the sessions of the House, and that it be directed to begin its investigations forthwith.

The debate on the resolution shows that the Speaker took the chair at the request of several Members, and after order had been restored stated that the committee had not regularly risen, and called upon the chairman, Mr. Zadoc Casey, of Illinois, to resume the chair. But Members interposed and took the ground that some steps should be taken in the matter. Then Mr. Underwood presented his resolution, and in the debate which followed, the necessity of a reform in the

¹ Such cases of disorder have been rare in the recent history of the House. For the last case see Cong. Record, second session Fifty-fifth Congress, p. 4043.

² First session Twenty-sixth Congress, Journal, pp. 814, 898; Globe, pp. 343, 394–396, 398.

³ Robert M. T. Hunter, of Virginia, Speaker.

manners of the House was strongly urged. The committee reported April 25, and on April 27 the report¹ came up in the House.

The committee examined several witnesses and found that the controversy arose over the presentation of a paper relating to the receipts and expenditures of the Treasury, and that from dissenting views and words the two Members proceeded to a violent personal encounter. The members of the committee concluded their report with the statement that under the terms of the resolution they considered that their duty was simply to ascertain the facts, and that they were without authority to make any recommendation or submit any proposition to the House. They accompanied their report with the testimony. On May 14² the report was considered in the House. A diversity of opinion arose as to whether the House should consider the case and punish the two Members by censure or expulsion for breach of privilege, or confine its attention to regulations for the future punishment of such offenses. After debate the subject was recommitted to the select committee with instructions to report what further proceedings might be necessary on the part of the House, and also what the form of those proceedings should take. It does not appear that this committee ever reported again.

1650. For an assault during debate in Committee of the Whole, the House after expulsion had been suggested, exacted apologies from a Member.

Two Members having created disorder in Committee of the Whole by an encounter, the Speaker took the chair and restored order, and the House immediately referred the subject to a select committee.

On September 9, 1841,³ in Committee of the Whole House on the state of the Union, a rencounter took place between two Members of the House, viz, Henry A. Wise, of Virginia, and Edward Stanly, of North Carolina, and great heat and confusion arising, and the Committee being in disorder, the Speaker⁴ took the chair and brought the House to order.

Both gentlemen made explanations, Mr. Wise apologizing to the House.

Thereupon Mr. Charles J. Ingersoll, of Pennsylvania, moved the following resolution:

Resolved, That a special committee be appointed to inquire into the circumstances of the rencounter on the floor of the House between Mr. Wise and Mr. Stanly, Members of this House, and to report thereon to the House.

This resolution being agreed to, the following were appointed the committee: Messrs. Ingersoll; Jeremiah Morrow, of Ohio; Horace Everett, of Vermont; Robert L. Caruthers, of Tennessee; Leverett Saltonstall, of Massachusetts; Isaac E. Holmes, of South Carolina, and Charles G. Ferris, of New York.

On September 11 the committee made the following report:

That they notified those gentlemen of their meeting in committee, where Mr. Wise and Mr. Stanly might attend if they thought proper, and that their respective written statements would be received by the committee.

¹ First session Twenty-sixth Congress, House Report No. 488.

² Journal, pp. 892-900.

³ First session Twenty-seventh Congress, Journal, pp. 488, 513, 514; Globe, pp. 445, 451.

⁴ John White, of Kentucky, Speaker.

With commendable promptitude and candor both those gentlemen presented written statements not materially differing in their several accounts.

The committee, therefore, deemed it superfluous to take further testimony, and without delay, as the session is drawing to a close, present the following outline of this transaction:

During debate in Committee of the Whole, on the 9th day of the month, Mr. Stanly having said what Mr. Wise considered improper, or unkind, he left his seat, after Mr. Stanly resumed his, and went to it. Some exciting private conversation took place between them, of an angry but not insulting character, till Mr. Wise warned Mr. Stanly not to speak of him again as he said he had done; that he told him that he, Mr. Wise, but for their past relations, would scale Mr. Stanly on the floor for the first before-mentioned attack in debate. Mr. Stanly replied that he would not take Mr. Wise's warning. Mr. Wise proposed to Mr. Stanly, as Mr. Wise states for explanation, that they should go out of the House together. Mr. Stanly refused to go, saying, as he alleges, "No, sir; you have heard what I have said; you can take your own course; I have nothing more to say." Mr. Wise then applied contemptuous language to Mr. Stanly, which he cast back on Mr. Wise. The controversy thus became angry, and terms of indignity being exchanged, Mr. Wise says that he applied to Mr. Stanly terms of extreme insult, which Mr. Stanly repelled by calling Mr. Wise a liar; whereupon Mr. Wise says he struck Mr. Stanly, who says Mr. Wise struck at him. Blows were aimed, if not given, by both, at each other, in a conflict, which was put an end to by adjacent Members forcibly separating the combatants.

The proceedings of the House were entirely suspended by the tumult and confusion which ensued. Persons from without rushed in to the scene of action; the Speaker, without form, resumed the chair, and for some time tried in vain to restore order.

The committee consider it useless to dwell in mere terms of condemnation on an outrage so detrimental to the dignity of the House of Representatives and derogatory to the character of the country. Every Member must feel, as every citizen has declared, that it is high time to put an end to such destructive occurrences.

They therefore submit the following resolutions:

Resolved, That this report be inserted in full on the Journal of the House as a reprimand.

Resolved, That it be henceforth among the rules of this House that for any insulting word applied by Member to another in Committee of the Whole it shall be the duty of the chairman of the committee to report the same to the Speaker on his resuming the chair, whereupon the Speaker shall inflict a fine of not less than one hundred dollars on the offending Member, to be deducted from his compensation; and that for any insulting word applied by any Member to another, in the House, the Speaker shall fine him as before mentioned, as on report of such offense in the Committee of the Whole. All such proceedings subject to an appeal to the House.

Resolved further, That it be henceforth among the rules of the House that for any blow or assault inflicted by a Member of this House on another in Committee of the Whole the same shall be reported by the chairman of said committee to the Speaker; and for any blow or assault inflicted by a Member of this House on another, in the House, it shall be the duty of the Speaker in all such cases aforesaid forthwith to submit to the House a motion for the expulsion of such offending Member, which motion the House shall immediately, in priority to all other business, proceed, on the Speaker's said motion, to determine.

Debate arose on this report, in the course of which several propositions were submitted, one of them being a resolution for the expulsion of Mr. Wise.

Finally the House, by a vote of 104 yeas to 36 nays, voted to recommit the report with the following instructions, proposed by Mr. Alexander H. H. Stewart, of Virginia:

That as the Hon. Henry A. Wise, who was the assailant of the Hon. Edward Stanly on the floor of the House of Representatives on the 9th instant, has made the proper acknowledgments to the House, and as the controversy between the parties has been amicably and honorably adjusted,

Resolved, therefore, That all further proceedings on the part of this House be discontinued.

The Journal does not record that the committee reported as instructed.

1651. Two Members having assaulted one another in Committee of the Whole, the House appointed a committee of inquiry, although the two Members had severally explained to the House and reconciled their quarrel.

A person who had wounded one of the police of the Capitol was by the House committed to the custody of its Sergeant-at-Arms while a committee was instructed to investigate.

In 1844 the Speaker took the chair to quell disorder which had arisen in Committee of the Whole, whereupon the Chairman stated to the House the facts as to the disorder.

On April 23, 1844,¹ on motion of Mr. James J. McKay, of North Carolina, the rules were suspended, and the House resolved itself into the Committee of the Whole House on the state of the Union (Mr. George W. Hopkins, of Virginia, in the chair), and proceeded to the consideration of the bill (No. 213) to modify and amend the act entitled "An act to provide revenue from imports, and to change and to modify existing laws imposing duties on imports, and for other purposes," approved August 30, 1842; and after some time spent therein warm words passed, which were followed by an assault between two Members, Messrs. George Rathbun, of the State of New York, and John White, of the State of Kentucky; and, great heat and confusion arising, and the committee being in great disorder, the Speaker² took the chair. Thereupon, order being restored, Mr. Hopkins, Chairman of the Committee of the Whole, rose and stated to the House the facts as they occurred in the committee, when Mr. Romulus Mitchell Saunders, of North Carolina, moved a resolution, which, with amendments proposed by Messrs. Cave Johnson, of Tennessee, and Jacob Thompson, of Mississippi, was agreed to as follows:

Resolved, That a select committee of five be appointed to inquire into the circumstances of the rencontre on the floor of the House between Mr. Rathbun and Mr. White, Members of this House, and to report thereon to the House; and that the committee be instructed to inquire into the expediency of reporting a bill or resolution providing for the exemplary punishment of any offenses within the walls of this Capitol or within the public grounds attached thereto. And that the same committee also examine into the assault made this morning upon one of the police of the Capitol by William S. Moore, and report all the facts in the case, and what, if any, connection existed between that assault and the encounter which took place between two of the Members of this House.

Mr. Saunders, Mr. John Quincy Adams, of Massachusetts, Mr. George C. Dromgoole, of Virginia, Mr. John J. Harding, of Illinois, and Mr. Reuben Chapman, of Alabama, were appointed on the committee.

Previously to the adoption of the resolution Mr. White and Mr. Rathbun severally explained to the House, and a reconciliation of the quarrel took place between them in the presence of the House.

After the appointment of the committee, Mr. Dromgoole moved the following resolution:

Resolved, That the Sergeant-at-Arms of this House retain in custody William S. Moore until the further order of the House.

¹First session Twenty-eighth Congress, Journal, p. 846; Globe, pp. 552, 577, 578, 604.

²John W. Jones, of Virginia, Speaker.

This was agreed to after the House had disagreed to an amendment proposed by Mr. William W. Payne, of Alabama, and providing that the Sergeant-at-Arms should be directed "to deliver to the civil authorities of this District, William S. Moore, charged with having fired a pistol, with the supposed intent to kill a Member of this body, and thereby, badly wounding a police officer."

In considering what course should be pursued, the Members in debate recalled the precedents in the cases of Messrs. Wise and Stanly and Messrs. Bell and Turney.

On May 13 the select committee reported that on the first branch of the subject, the rencontre between the two gentlemen, the committee had examined 34 witnesses, whose statements were sworn to. This testimony the committee reported to the House, but proposed no resolution, as they had no authority. Therefore the committee left the case with the House for its disposal. In the second branch of the case, the assault by William S. Moore, they had examined 16 witnesses, and reported all the material facts of the case. The committee expressed in distinct terms the power of this House to exclude offenders against decorum from its presence, and to punish for contempt committed within its presence, or the violation of any of its acknowledged privileges. But as it had been decided by the United States Supreme Court, in cases which the report set forth, that the House had no power to punish for contempt beyond imprisonment, which could only last during the continuance of the session of the House, the committee had thought proper to report a resolution, although they were only called upon to report the facts of the case. They had deemed it advisable to report a resolution to enable the House to act directly on the question, both as regarded the individual and themselves. And while the committee deemed it competent in this House to punish individuals for a violation of its privileges, and while such a punishment would be no bar to any future prosecution, the committee was of opinion that no such punishment should be inflicted by this House, but that the individual (Moore) should be turned over to the judicial authorities of the country. An officer would be ready to take Moore into custody as soon as he should be discharged from the custody of the Sergeant-at-Arms.

After considerable debate and a postponement, on May 16, when a proposition to censure Messrs. White and Rathbun was pending, the whole subject was laid on the table, yeas 82, nays 73.

The report ¹ of the committee held, as to the case of Moore:

In the case of *Anderson v. Dunn*, arising out of an arrest of the plaintiff by the defendant, as an officer of this House, and acting under the Speaker's warrant, the Supreme Court have declared the highest power either House has to punish for contempt is that of imprisonment, and that this confinement can not extend beyond the existence of the session. So that, it follows, imprisonment must terminate with adjournment. The offense charged against the party would be that of an assault with intent to kill. If the party should be convicted of this crime, it would call for a higher degree of punishment than this House has the power to impose.

1652. An assault occurring between two Members in Committee of the Whole, the committee rose and the Speaker restored order before receiving the report.

Members who had committed an assault in Committee of the Whole

¹ Report No. 470, fast session Twenty-eighth Congress.

apologized to the House, although the Chairman of the committee had made no report of the occurrence.

An apology of Members for an assault committed in Committee of the Whole was not placed in the Journal.

On March 12; 1852,¹ while the Committee of the Whole House on the state of the Union was considering the resolution (S. 17) to authorize the continuance of the work on the two wings of the Capitol, an altercation arose between Messrs. Albert G. Brown, of Mississippi, and John A. Wilcox, of Mississippi, blows were exchanged, and a violent personal conflict ensued.

A motion that the committee rise was made and carried, and the Chairman reported that the committee had had the state of the Union generally under consideration, and particularly the bill (S. 17) to authorize, etc. No mention of the disorder was made in the report.

This report was not made, however, until order was restored by the Speaker, the Speaker² declining to receive the report until then.

A resolution was then offered to close debate on the bill before the committee; and pending consideration of this resolution, by unanimous consent Messrs. Brown and Wilcox, respectively, arose and made apology to the House for the disorder.

No further action was taken, and the Journal contains no reference to the affair.

1653. A Member having defied and insulted the Chairman of the Committee of the Whole, the Chairmam left the chair and, on the chair being taken by the Speaker, reported the facts to the House.

For defying and insulting the Chairman of the Committee of the Whole, the House declared Sherrod Williams in contempt and liable to censure.

An instance wherein, after a Member had explained, the House reconsidered its vote of censure.

In 1836 it seems to have been customary for the Chairman of the Committee of the Whole to count the committee to ascertain as to the presence of a quorum.

On July 2, 1836,³ the House having gone into Committee of the Whole House on the state of the Union, after some time spent therein, the committee rose, and Mr. Joel B. Sutherland, of Pennsylvania, reported that while in Committee of the Whole House Mr. Sherrod Williams, of Kentucky, a member of the committee, addressed the Chairman (Mr. Sutherland) while he (the Chairman) was counting the Members for the purpose of ascertaining whether a quorum was present, and was called to order by the Chairman and requested to take his seat. This he positively and repeatedly refused to do, and called the Chairman to order and demanded of him to take his seat; and Mr. Williams persisting in his refusal to submit to the authority of the Chair, the Chairman had left the chair, and now reported the facts which had induced the committee to rise to the Speaker, and through him to the House.

¹ First session Thirty-second Congress, Globe, p. 736.

² Linn Boyd, of Kentucky, Speaker.

³ First session Twentyfourth Congress, Journal, pp. 1209, 1225; Globe, p. 484.

The House proceeding to consider the report, a resolution was offered by Mr. John M. Patton, of Virginia, for the appointment of a committee to consider what should be done "in vindication of the authority of the House, condemned by the violation of order." The House, however, with scarcely any dissent adopted a resolution offered by Mr. James A. Pearce, of Maryland, as follows:

Resolved, That the Member from Kentucky (Mr. Williams) having refused to take his seat when ordered so to do by the Chairman of the Committee of the Whole House, having ordered the Chairman to take his seat, and having defied the power of the Chair and the House, has committed a contempt of this House and is justly liable to its censure.

The record of the debate shows that Mr. Williams acknowledged that he had intended to express his disrespect for the Chairman personally, the latter having ignored his demands for a division of a question. Later, after a vote by tellers had disclosed the absence of a quorum, the Chairman, instead of vacating the chair and reporting the fact to the House, had proceeded to count the committee. For this Mr. Williams had called him to order.

The Speaker¹ said that the course of the Chairman in counting the House when a quorum had not voted was strictly parliamentary.

Mr. Elisha, Whittlesey, of Ohio, said the difficulty arose because the gentleman from Kentucky did not know the rules. It had been the invariable rule (practice is evidently meant) for the Speaker and Chairman of the Committee of the Whole, whenever the question was raised whether a quorum was present or not, to proceed himself to count the Members or to ascertain in any other way he thought best to accomplish that object.

As Mr. Williams refused to make any other apology than to say that he intended to insult the Chairman without intending to insult the House, and as Mr. Sutherland refused absolutely to go back into the chair under such circumstances, the House was forced to act. The Speaker stated that the case was altogether of a novel character, and Mr. R. M. Johnson, of Kentucky, thought it was perhaps the first instance of the kind since the organization of the Government.

On July 4, explanation having been made to the House by Mr. Williams, the House reconsidered the resolution declaring Mr. Williams justly liable to censure, and then decided it in the negative.²

1654. Three Members of the House were ordered to the bar of the House to answer for a contempt of privilege in being present at and assisting in an assault between two other Members.—On July 17, 1866,³ the House agreed to the following resolution, one of three reported by a select committee of investigation:

Resolved, That Charles D. Pennypacker, of Kentucky, L. B. Grigsby, of Kentucky, and John S. McGrew, of Ohio, by their presence and participation in a premeditated assault between Hon. Mr. Rousseau, of Kentucky, and Hon. Mr. Grinnell, of Iowa, on account of words spoken in debate, in which the persons, if not the lives, of Members of the House were imperiled, were guilty of a violation of its privileges, and they are hereby ordered to be brought to the bar of this House to answer for their contempt of its privilege.

¹James K. Polk, of Tennessee, Speaker.

²Debates, pp. 4623, 4624; Journal, p. 1225.

³First session Thirty-ninth Congress, Journal, pp. 1036, 1111; Globe, p. 3891.

On July 24 it was ordered, on motion of Mr. Nathaniel P. Banks, of Massachusetts, that the execution of this order be dispensed with.

1655. The case of Lovell H. Rousseau, in contempt of the House, in 1866.

An assault by one Member on another for words spoken in debate was made the subject of an investigation by a select committee.

Discussion of the offense of questioning a Member "in any other place" for words spoken in debate.

The words of a Member having been excepted to but not taken down when delivered, and having afterwards been investigated by a committee, it was held in order to propose censure of the Member.

On June 15, 1866,¹ Mr. Rufus P. Spalding, of Ohio, as a question of privilege, offered the following resolution, which was agreed to by the House without debate, the previous question being ordered:

Whereas it is alleged in the public press that Hon. Lovell R. Rousseau, a Member of this House from the State of Kentucky, did, on the evening of Thursday, the 14th instant, commit an assault upon the person of Hon. Josiah B. Grinnell, a Member of this House from the State of Iowa, because of words spoken in debate in this House by the latter; and whereas said assault if committed, was a breach of the privileges of this House and of the Member assaulted: Therefore,

Resolved, That a select committee of five be appointed by the Speaker to investigate the subject, and to report the facts, with such resolution thereto as in their judgment may be proper and necessary for the vindication of the privileges of the House and the protection of its Members; and that said committee have power to send for persons and papers and to examine witnesses on oath.

The committee² I reported on July 2, and on July 14 the report was taken up for consideration in the House.³ The committee found in their report that previous to the 14th of June Mr. Grinnell, on the floor of the House, in debate, had imputed cowardice to Mr. Rousseau in the latter's career as a soldier; that after the adjournment of the House on the 14th of June Mr. Rousseau assaulted Mr. Grinnell in the portico of the east front of the Capitol. The assault was made with a light cane. Three Members, each of whom was armed, as the committee found afterwards, were present as friends of Mr. Rousseau and they afterwards admitted that they should have taken part in the event of interference. The committee found no justification for the charge against the character of Mr. Rousseau for cowardice and condemned it as an infraction of the rules and usages of the House. Indeed, the minority considered the provocation so great that they dissented from the proposition of expulsion submitted by the majority. The majority of the committee found that, in spite of the provocation, there was no excuse for a resort to violence in contempt of the provision of the Constitution that "for any speech or debate in either House they (Members) shall not be questioned in any other place." Parliamentary assemblies were founded on the theory of the inviolability of the person of the Representative. An act of violence against a Member was an act of insurrection against the people whom he represented. It could not be justified by

¹ First session Thirty-ninth Congress, Journal, pp. 842, 843; Globe, p. 3194.

² Journal, pp. 944, 1018; Globe, pp. 3544, 3818.

³ The report of the committee was signed by Messrs. Spalding, N. P. Banks, of Massachusetts, and M. Russell Thayer, of Pennsylvania. Messrs. Henry J. Raymond, of New York, and John Hogan, of Missouri, submitted minority views.

any delinquency or wrong on the part of the Representative which they have not authorized and for which they ought not to be held responsible or deprived of the rights of representation. "These prerogatives of the Representative," says the report, "are so much a matter of public concern that they can not be taken away by any act of the assembly of which he is a member, except by an order of expulsion or its equivalent, or annulled by the legislature; and, so far as they secure to him the right of attendance, it is not in the power of the Representative to waive or surrender them."

The committee recommended the following resolutions:

Resolved, That Hon. Lovell H. Rousseau, a Representative from Kentucky, by committing an assault upon the person of Hon. J. B. Grinnell, a Representative from the State of Iowa, for words spoken in debate, has justly forfeited his privileges as a Member of this House, and is hereby expelled.

Resolved, That the personal reflections made by Mr. Grinnell, a Representative from the State of Iowa, in presence of the House, upon the character of Mr. Rousseau, a Representative from the State of Kentucky, were in violation of the rules regulating debate and the privileges of its Members founded thereon, and merit the disapproval of the House.

Resolved, That Charles D. Pennypacker, of Kentucky, L. B. Grigsby, of Kentucky, and John S. McGrew, of Ohio, by their presence and participation in a premeditated assault between Hon. Mr. Rousseau, of Kentucky, and Hon. Mr. Grinnell, of Iowa, on account of words spoken in debate, in which the persons, if not the lives, of Members of this House were imperiled, were guilty of a violation of its privileges, and they are hereby ordered to be brought to the bar of this House to answer for their contempt of its privileges.

Mr. James F. Wilson, of Iowa, raised the question of order that, under the rules of the House, Mr. Grinnell might not be held to answer for words that were not at the time taken down, and also that the committee had exceeded its authority.

After debate, the Speaker¹ said:

The point raised by the gentleman involves in the first place the rules of debate and the manner of calling to order, and secondly the authority of the committee under instruction of the House.

The sixty-first rule, first read by the gentleman, was adopted, except that part in italics, by the first Congress under the Constitution, April 27, 1789. The sixty-second rule, upon which he mainly relies, is in the precise words in which it was originally introduced by John Q. Adams. The history of the sixty-second rule may perhaps show the reason for its introduction.

In 1832, Andrew Stevenson being Speaker, Mr. Stanberry, of Ohio, in the course of debate, denounced the Speaker for his political course in severe language. The chair was then occupied temporarily by James K. Polk, who was afterwards Speaker. No notice was taken by the Speaker *pro tempore* or by any Member of that denunciation until after the speech of Mr. Stanberry had been concluded, when exceptions were taken to it. The next day a motion was made to censure the Member for denouncing the Speaker, which was regarded as contempt of the House. After a long debate that motion prevailed by a large majority. But in the course of the debate there was a question raised as to what were the exact words used by the Member in debate. There was then no Congressional Globe; nothing but Gales & Seaton's Register of the debates, which was not a verbatim report. To settle the question, however, Mr. Stanberry repeated and reaffirmed the language. The next day John Quincy Adams offered this rule, which was immediately laid on the table. Five years afterwards it was taken up and adopted, and has since formed a part of our parliamentary law.

There are two ways to call to order. First, for irrelevant debate. That simply draws the Member back to the subject. Second, for disorderly language, transgression of the rules of the House, or indecorum of any kind. The sixty-second rule applies precisely to that. The Chair will read it. Before that, however, he Chair will read the sixty-first rule:

"If any Member, in speaking or otherwise, transgress the rules of the House, the Speaker shall, or any Member may, call to order; in which case the Member so called to order shall immediately sit down, unless permitted to explain."

¹ Schuyler Colfax, of Indiana, Speaker. Globe, p. 3820.

Under this, the oldest rule, the primary responsibility of calling to order seemed to be devolved upon the Speaker, but under the sixty-second rule, and this has been the usage since its adoption, the primary responsibility of calling to order devolves upon the Members of the House, as will be seen.

"If a Member be called to order for words spoken in debate, the person calling him to order shall repeat the words excepted to, and they shall be taken down in writing at the Clerk's table, and no Member shall be held to answer, or be subject to the censure of the House, for words spoken in debate, if any other Member has spoken, or other business has intervened, after the words spoken, and before exception to them shall have been taken."

The inference is plain that some Member calls to order, and the Speaker then rules upon the point. In "personal" explanations, which every Speaker dislikes, out of which grow so much of the trouble, discord, and strife there is in Congress, the Speaker is the only Member who is not asked to give his consent to it. It is the unanimous consent of the other Members of the House that is required. It is generally understood that the Member who asks this consent intends to make some "personal" remarks in review of remarks made in Congress, in the press, or elsewhere in which he claims to have been misrepresented. And the uniform usage of Speakers has been, with scarcely a single exception, searching far back in our parliamentary history, that when the House grants unanimous consent for a Member to make "a personal explanation," the Speaker, who does not give his consent, whose consent is not asked, waits until some Member rises to a question of order, when he promptly decides it. There have been very few exceptions, which, indeed, only prove the general rule. One was by the present occupant of the Chair, upon the occasion involved in this report, who, after the gentleman from Iowa [Mr. Grinnell] had been twice called to order by Members on the floor, and the points had been sustained, stated that if this line of remark was continued, he should himself check him, and did so.

This sixty-second rule is divided in the middle by a semicolon, and the Chair asks the attention of the gentleman from Iowa [Mr. Wilson] to the language of that rule, as it settles the whole question:

"62. If a Member be called to order for words spoken in debate, the person calling him to order shall repeat the words excepted to"—

That is, the "calling to order" is "excepting" to words spoken in debate—"and they shall be taken down in writing at the Clerk's table; and no Member shall be held to answer, or be subject to the censure of the House, for words spoken in debate, if any other Member has spoken, or other business has intervened, after the words spoken, and before exception to them shall have been taken."

The first part of this rule declares that "calling to order" is "excepting to words spoken in debate." The second part of the rule declares that a Member shall not be held subject to censure for words spoken in debate if other business has intervened after the words have been spoken and before "exception" to them has been taken. Exception to the words of the gentleman from Iowa [Mr. Grinnell] was taken by the gentleman from Illinois [Mr. Harding], the gentleman from Massachusetts [Mr. Banks], the gentleman from Kentucky [Mr. Rousseau], and also by the Speaker of the House, as the records of the Congressional Globe will show. The distinction is obvious between the two parts of the rule. In the first part it speaks of a Member excepting to language of another and having the words taken down. In the last part of the rule it says he shall not be censured thereafter unless exception to his words were taken; but it omits to add as an essential condition that the words must also have been taken down. The substantial point, indeed the only point, required in the latter part of the rule is, that exception to the objectionable words must have been taken.

These rules, the sixty-first and sixty-second, are not always carried out to their full extent; it is not always required that the words excepted to shall be taken down in writing at the Clerk's desk, as we have the Congressional Globe, in which are printed all the words spoken as taken down by the reporters in full. Sometimes, indeed quite often, the Chair rules upon the question of order as soon as it is raised, without the words excepted to being required by anyone to be taken down in writing and read. Sometimes, as today, in the debate upon the bridge bill, a Member calls another to order, and requires the words to be taken down in writing, when the Speaker rules upon the question of order. Sometimes the rule is carried a step further, and the demand is made that the Member called to order shall take his seat until leave is granted by the House for him to proceed in order. Sometimes, but rarely, the House goes beyond this and carries out the rule to its fullest extent and rigor by censuring the offending Member upon the spot.

The gentleman from Iowa [Mr. Wilson] read a precedent of Mr. Speaker Grow, from the Thirty-seventh Congress. But he did not read the language of the Manual, which was quoted by the Speaker

at that time. The language of Mr. Vallandigham was uttered in Committee of the Whole, when the Speaker was not in the chair and could not be. The Manual lays down a specific rule regulating debate in Committee of the Whole, and this is the rule:

“Disorderly words spoken in a committee must be written down as in the House, but the committee can only report them to the House for animadversion.”

The only way the House could have taken notice of the words excepted to in that case was by having them written down in Committee of the Whole, to be reported to the House. The Committee of the Whole is a different body entirely from the House; it is presided over by a different person and is governed by different rules, as members are all aware. It has no power to censure a member for disorderly words, but must report them specifically to the House for its action.

The Chair is of the opinion, therefore, that under the sixty-second rule, which is composed of two parts, separated by a semicolon, it is distinctly shown by the first part that “calling to order” is excepting to words spoken in debate, and that can be pursued further, if any member sees fit to do so; that any member can demand that the words excepted to shall be taken down in writing, or a member may demand that the person called to order shall take his seat until the Speaker decides the point. But even if the decision is adverse the Speaker can not compel him to stop his speech, while any single member on the floor can, by demanding that he shall not proceed further unless by consent of a majority of the House. As this may seem strange to members, the Chair will read from the sixty-first rule:

“If the decision be in favor of the member called to order, he shall be at liberty to proceed; if otherwise, he shall not be permitted to proceed, in case any member object, without leave of the House.”

It is for any member to object to another against whom a point of order has been successfully made, going on without the leave of the House. And the rule seems to be predicated on the presumption that if, out of all the members who heard the objectionable words and the Speaker’s ruling against them, no one objects to his proceeding further, they are willing that he shall continue his speech. No such action was had in the House on the 11th of June, when this debate occurred. The Speaker promptly ruled upon every point of order which was raised. He ruled against the gentleman from Iowa [Mr. Grinnell] upon every point. Any gentleman upon either side had the right to insist that the gentleman should resume his seat and should not proceed until the House had given him permission to proceed in order. But no one raised that point, and thereby the right to raise it was waived. But that does not interfere with the operation of the last part of this rule, which states (inverting the language) that a member can be censured if exceptions to the words spoken by him were taken at the time.

But this case is also settled by the resolution adopted by the House. The gentleman from Ohio [Mr. Spalding] rose to a question of privilege, and submitted the resolution which has been read by the gentleman from Iowa. The Chair construes the preamble of that resolution somewhat differently from the gentleman from Iowa. That gentleman emphasized the latter part of the preamble, while the Chair thinks that the portion narrating the affair is the substantial part. The Chair will read the preamble and resolution, so that the House may judge whether his construction of them is correct. It may be remarked, in passing, that no gentleman moved to amend them, and they were unanimously agreed to by the House as instructions to this committee:

“Whereas it is alleged in the public press that Hon. Lovell H. Rousseau, a member of this House from the State of Kentucky, did, on the evening of Thursday, the 14th instant, commit an assault upon the person of Hon. J. B. Grinnell, a member of this House from the State of Iowa, because of words spoken in debate in this House by the latter; and whereas said assault, if committed, was a breach of the privileges of this House and of the member assaulted: Therefore,

“Resolved, That a select committee of five be appointed by the Speaker to investigate the subject and to report the facts, with such resolutions in reference thereto as in their judgment may be proper and necessary for the vindication of the privileges of the House and the protection of its members, and that said committee have power to send for persons and papers and to examine witnesses on oath.”

The resolution referring to the preamble, which states that the member from Kentucky did “commit an assault upon the person of Hon. J.B. Grinnell, a member of this House from the State of Iowa, because of words spoken in debate in this House by the latter,” and holding such assault to be a breach of the privileges of this House and of the member assaulted, instructs this committee to “investigate the subject and to report the facts, with such resolutions in reference thereto as in their judgment may be proper and necessary for the vindication of the privileges of the House and the protection of its members.”

The Chair thinks that this gave the committee full jurisdiction in the case, by the unanimous order of the House, no one proposing to limit their resolutions, but conferring on them full power to report whatever, on the facts ascertained by them, they deemed proper and necessary for the double object of vindicating the privileges of the House and the protection of its members.

Now, in the case cited by the gentleman from Iowa, in which Mr. Vallandigham used language reflecting upon Senator "Wade, if the latter had been in the Hall at the time and when so offensively denounced, had immediately committed a personal assault upon the former, and if a committee had been appointed with instructions to investigate the matter as a violation of the privileges of a member of the House, is it not evident that the House would have expected the committee to report with reference to the whole controversy, even if an immediate collision had prevented the words from being excepted to, taken down and read at the Clerk's table, and ruled on by the Speaker; that the committee should at least have embraced in their report anything closely connected with the transaction—bearing the relation, it might be said, of cause to effect? Certainly this would have been expected by the House. In accordance with this principle was the action of the select committee upon the case which arose in the Thirty-fourth Congress, when a member from South Carolina, aided by another standing near by, assaulted a Senator from Massachusetts in his seat for words spoken in debate. In that case the committee reported upon the entire subject, including everything out of which the assault grew.

The Chair, therefore, is of opinion that under the instructions unanimously given in this case to the committee by this House the committee had authority to report upon the whole controversy, in accordance with the specific language of the preamble of the resolution providing for the appointment of the committee to investigate in assault caused by words spoken in debate. The Chair, therefore, overrules the point of order.

1656. The case of Lovell H. Rousseau, continued.

The House, after declining to expel, censured a Member for contempt in assaulting another Member for words spoken in debate.

A committee having general authority to examine and recommend in relation to an assault between two Members, was held to have authority also to recommend censure of other Members implicated.

The House having ordered a Member to be censured, he was allowed, by unanimous consent, to make explanation before the execution of the order.

A Member, for whom the House had voted censure, announced that he had sent his resignation to the Governor of his State; but the House nevertheless voted to inflict the punishment.

Censure inducted on a Member by the Speaker, by order of the House, appears in full in the Journal.

Where a two-thirds vote is required, a Member voting on the prevailing side may move to reconsider, even though he be one of an actual minority.

A majority is required to reconsider a vote taken under conditions requiring two-thirds for affirmative action.

Mr. Charles A. Eldridge, of Wisconsin, made the further point of order that the committee had no jurisdiction over the three Members mentioned in the third resolution, and that at most it could only report the facts in the case.

The Speaker said:¹

The Chair overrules the point of order, for the reasons already stated by him in his decision just made. The committee were authorized and instructed—

"To investigate the subject and to report the facts, with such resolutions in reference thereto as

¹ Globe, p. 3821.

in their judgment may be proper and necessary for the vindication of the privileges of the House and the protection of its Members."

It was a large authority, and if they had evidence that these gentlemen were connected in any way as accessories to the assault they had the right to report. Citizens have often been brought to the bar of the House for breach of its privileges. In the Fourth Congress the House of Representatives committed Randall and Whitney, two citizens, for attempting to corrupt the integrity of certain Members of Congress, which the House decided to be a contempt and breach of its privilege. In the same Congress it was decided that a challenge given by a citizen to a Member of Congress was a breach of privilege; and it was also decided to be a breach of privilege for the official printer (elected under the old law) to publish paragraphs defamatory of Congress in the official organ. The Chair thinks the committee had the right to report the third resolution as well as the second, and therefore overrules the point of order.

On July 16 and 17,¹ the report was debated in the House. Mr. Robert S. Hale, of New York, offered a proposition declaring that the House reported both personal reflections in debate and acts of violence toward Members, and declaring further the power and authority of the House to protect the privileges of its Members, but expressing the opinion that under the circumstances it was inexpedient to take further action. This proposition was decided in the negative.

Mr. Thaddeus Stevens, of Pennsylvania, submitted in the form of an amendment a proposition to adopt in place of all the resolutions reported by the committee the following:

Resolved, That Hon. Lovell H. Rousseau be summoned to the bar of the House, and he there publicly reprimanded by the Speaker for the violation of the rights and privileges of the House, of which he was guilty in the personal assault committed by him upon Hon. J.B. Grinnell for words spoken in debate.

This proposition was decided in the negative, yeas 35, nays 94.

The question was then taken on the proposition of the minority, submitted by Mr. Raymond, to substitute the following for the first resolution reported by the committee:

Resolved, That Hon. Lovell H. Rousseau be, and he is hereby, reprimanded for the violation of the rights and privileges of the House, of which he was guilty in the personal assault committed by him upon Hon. J. B. Grinnell, for words spoken in debate.

This proposition was decided in the negative, yeas 59, nays 69.

Then the question was taken on the first resolution of the committee, expelling Mr. Rousseau. And there appeared 73 yeas and 51 nays. So the resolution of expulsion was not agreed to. Mr. Nathaniel P. Banks, of Massachusetts, who had voted in the negative, which was the prevailing side, entered a motion to reconsider. The Speaker ruled that a Member voting on the prevailing side might move to reconsider, and that a majority vote would be required to reconsider.

The House next laid on the table the second resolution of the committee, that of censuring Mr. Grinnell.

The third resolution, censuring the three Members who had witnessed the affair, was agreed to.

Then the motion of Mr. Banks to reconsider was called up, and being agreed to, the question recurred on the resolution of expulsion.

¹ Journal, pp. 1018, 1028, 1031, 1033, 1037; Globe, pp. 3846, 3874, 3891.

Mr. Banks thereupon moved to amend it by striking out all after the word *Resolved* and inserting:

That Hon. Lovell H. Rousseau, a Member of this House from the State of Kentucky, be summoned to the bar of this House, and be there publicly reprimanded by the Speaker for the violation of its rights and privileges, of which he was guilty in the personal assault committed by him upon the person of Hon. J. B. Grinnell, a Member of this House from the State of Iowa, for words spoken in debate.

This amendment was agreed to, and then the resolution, as amended, was agreed to, yeas 89, nays 30.

On July 21,¹ the chairman of the select committee demanded that the order of the House be executed. Thereupon Mr. Rousseau, who had not spoken during the proceedings, asked the privilege of making a personal explanation, and by unanimous consent this request was granted. In the course of the explanation Mr. Rousseau announced that he had sent his resignation to the Governor of Kentucky.

A question at once arose as to the propriety of carrying out the order of the House under these circumstances. After debate as to the right of the Member to resign, and after the point had been made that the House had the same right to censure a citizen who had invaded its privileges that it had to censure a Member, the House declined to postpone the execution of the order, by a vote of 43 yeas to 62 nays.

Then Mr. Rousseau presented himself at the bar of the House, and the Speaker inflicted on him the censure of the House. This censure appears in full in the Journal.

On July 24, by unanimous consent, it was—

Ordered, That the execution of the order of the House in the case of those implicated in the assault upon Ron. Mr. Grinnell be dispensed with.²

1657. Two Members having created disorder in Committee of the Whole, the Speaker took the Chair and restored order, whereupon the Committee rose, and the House adjourned before taking action on the disorder.

Although a breach of privilege occur in Committee of the Whole, it yet relates to the dignity of the House and is so treated

The rule requiring words spoken out of order to be taken down at once does not apply to an occurrence of disorder constituting a breach of privilege.

For an assault during debate in Committee of the Whole the House, after expulsion had been suggested, exacted apologies from two Members.

On December 21, 1880,³ in Committee of the Whole House on the state of the Union, a scene of great disorder occurred between Messrs. James B. Weaver, of Iowa, and William A. J. Sparks, of Illinois. The Speaker took the Chair and restored order, and immediately thereafter the Committee arose and the House adjourned.

Immediately upon the assembling of the House on December 22,⁴ Mr. Selwyn Z.

¹ Journal, pp. 1074–1076; Globe, pp. 4009–4017.

² Journal, P. 1111.

³ Third session Forty-sixth Congress, Journal, p. 114; Record, p. 311.

⁴ Journal, p. 115; Record, pp. 328–335.

Bowman, of Massachusetts, rising to a parliamentary inquiry, asked if the reading of the Journal would be such intervening business as was referred to in the words of the rule:

He (the Member) shall not be held to answer, nor be subject to the censure of the House therefor, if further debate or other business has intervened.

The Speaker¹ said:

The Chair is of the opinion that the reading of the Journal does not take from the House any privilege that it now possesses.

The Journal having been read and approved, Mr. Robert M. McLane, of Maryland, claiming the floor for a question of privilege, referred to the scene of disorder the day before.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the occurrence was in Committee of the Whole, and that the House had no knowledge of it.

The Speaker said:

The Chair would state that whatever might have been his decision touching that part of the rules to which the gentleman from Massachusetts has directed the attention of the Chair—clauses 4 and 5 of Rule XIV—the Chair finds warrant for the recognition of the gentleman from Maryland in the terms of Rule IX, which declares:

“Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings.”

This matter, in the opinion of the Chair, relates, beyond controversy, to the dignity of the House. The Chair therefore rules the question one of privilege.

Mr. McLane then, after remarks, submitted the following:

Resolved, That the gentlemen from Iowa and Illinois be required to now apologize to this House for their conduct yesterday in this House.

In the course of the debate two other propositions were submitted, the first by Mr. Bowman, as follows:

Resolved, That, for gross breach of the privileges, rules, and decorum of this House, James B. Weaver, of Iowa, and William A. J. Sparks, of Illinois, be, and they hereby are, expelled from the House of Representatives of the Forty-sixth Congress of the United States.

The second proposition, submitted by Mr. Thomas M. Browne, of Indiana, proposed the investigation of the occurrence by a special committee.²

In the course of the debate the point was raised that the House might not take cognizance of the affair, because the words were not taken down at the time, and it was in reply urged that when the rule was framed the House did not have sworn reporters, and therefore it was necessary that spoken words be taken down at the time. The Speaker adhered to his ruling that the subject came as a question of privilege, and not under the rule providing for taking down of words. As to whether or not the words of the Congressional Record might be made a basis of action by the House, the same as words taken down under the rule, the Speaker declined to rule.

The House had by vote agreed to the proposition of Mr. Browne as an amend-

¹ Samuel J. Randall, of Pennsylvania, Speaker.

² Messrs. Sparks and Weaver had applied opprobrious epithets to one another, and Mr. Weaver had menaced Mr. Sparks with physical violence.

ment, when Messrs. Weaver and Sparks, by unanimous consent, made personal explanations, apologizing to the House for their conduct.

Thereupon, by a vote of yeas 105, nays 44, the House laid the whole subject on the table.

1658. The House has frequently allowed personal difficulties arising in debate and even violent assaults to pass without notice, the Members concerned making apologies either personally or through other Members.

When Members apologize for disorderly proceedings which the House has allowed to pass without taking action, the apology has not usually been entered on the Journal.

On March 25, 1834,¹ Mr. Seaborn Jones, of Georgia, arose and explained that a difficulty which had arisen a few days before on the floor between Messrs. James Blair and Henry L. Pinckney, of South Carolina, had been settled by an adjustment "amicable, satisfactory, and honorable." As the occurrence had taken place in the House it was the desire of those gentlemen that the House should know that it had been adjusted.

1659. On December 19, 1849,² Mr. Thomas H. Bayly, of Virginia, presented to the House a written explanation of a difficulty that had occurred between Messrs. William Duer, of New York, and Richard K. Meade, of Virginia, in debate on a previous day. This explanation was signed by Mr. Bayly, on behalf of Mr. Meade, and by Mr. C. M. Conrad, of Louisiana, on behalf of Mr. Duer.

No reference to this appears in the Journal.

1660. On March 22, 1852,³ Mr. Robert W. Johnson, of Arkansas, arose and stated that the unpleasant misunderstanding between Messrs. Cyrus L. Dunham, of Indiana, and Graham N. Fitch, of Indiana, which occurred on the 17th, had been referred to Mr. John C. Breckenridge, of Kentucky, and himself, and it was now in his power to state that all difference had been justly and honorably settled.

No mention of this occurrence appears in the Journal.

1661. On August 25, 1852,⁴ Mr. Robert W. Johnson, of Arkansas, announced to the House the settlement of the "unpleasant difficulty" which had occurred on the floor of the House on the preceding day between Messrs. Addison White, of Kentucky, and William H. Polk, of Tennessee.

The Journal makes no mention of this explanation.

1662. On February 5 1858,⁵ during dilatory proceedings pending the reference of the message of the President relating to the Lecompton constitution of Kansas, a violent personal conflict occurred between Messrs. Galusha A. Grow, of Pennsylvania, and Lawrence M. Keitt, of South Carolina; Members crowded about and several participated. No mention of this occurs in the journal and no subsequent action seems to have been taken by the House. But on February 8 Messrs. Keitt and Grow severally apologized to the House for their breach of its order and decorum. No notice of this appears on the Journal.

¹ First session Twenty-third Congress, Debates, p. 3137.

² First session Thirty-first Congress, Globe, p. 44.

³ First session Thirty-second Congress, Globe, p. 814.

⁴ First session Thirty-second Congress, Globe, p. 2345.

⁵ First session Thirty-fifth Congress, Journal, pp. 328, 329, 349; Globe, pp. 603, 623.

1663. In early and infrequent instances of misunderstanding and disorder in the Senate no action was taken beyond investigation.—On March 2, 1833,¹ in the Senate, Mr. Henry Clay, of Kentucky, arose and made remarks in explanation and reconciliation of a misunderstanding that had taken place in debate between Mr. Daniel Webster, of Massachusetts, and Mr. George Poindexter, Of Mississippi.

1664. In 1850² occurred an episode between Messrs. Thomas H. Benton, of Missouri, and Henry S. Foote, of Mississippi, in the Senate, in which the latter menaced the former with a pistol. The subject was referred to a select committee, who made a report giving the facts in the case, and condemning the practice of carrying arms in the Senate as well as regretting the flagrant breach of order. The report further stated that this was the first instance of disorder of this kind in the Senate. There was no recommendation for action and no action was taken by the Senate.

1665. For unparliamentary language and an assault two Senators were declared in contempt and later were censured.

Two Senators having been declared in contempt a question was raised as to the right to suspend their functions as Senators, including the right to vote, but was not decided.

The President pro tempore of the Senate declined to take the responsibility of directing the Secretary to omit from the call of the yeas and nays the names of two Senators who had been declared in contempt.

Two Senators, declared by the Senate to be in contempt, were allowed to speak only after permission had been given by the Senate.

On a resolution in the Senate censuring two Senators the names of both were called, but neither voted.

On February 22, 1902,³ while the Senate was considering the bill (H.R. 5833) temporarily to provide revenue for the Philippine Islands, Mr. John L. McLaurin, of South Carolina, referring to a certain statement made in debate by Mr. Benjamin R. Tillman, of South Carolina, said:

“I now say that that statement is a willful, malicious, and deliberate lie.”

At this point Mr. Tillman advanced to Mr. McLaurin, of South Carolina, and the two Senators met in a personal encounter, when they were separated by Mr. Layton, the acting assistant doorkeeper, assisted by several Senators sitting near.

The Senate at once went into executive session, and after some time spent therein the executive session was terminated and the injunction of secrecy was removed from the following, which had been agreed to:

Ordered, That the two Senators from the State of South Carolina be declared in contempt of the Senate on account of the altercation and personal encounter between them this day in open session, and that the matter be referred to the Committee on Privileges and Elections with instructions to report what action shall be taken by the Senate in regard thereto.

Thereupon Mr. J. C. S. Blackburn, of Kentucky, asked whether or not Mr. Tillman would be entitled to recognition to make a statement.

¹ Second session Twenty-second Congress, Debates, p. 810.

² First session Thirty-first Congress, Globe, pp. 762, 769, 1153, 1479, 1480.

³ First session Fifty-seventh Congress, Record, pp. 2087–2090.

After debate the President pro tempore¹ said:

While these two Senators are declared to be in contempt the Chair could not recognize either if he should rise and address the Chair; but on motion made by any Senator that they be heard the Chair would recognize the Senator making the motion, and would hold that the motion was in order. In the ordinary transgression of the rules or violation of order the Senator violating must take his chair, and he can not be recognized by the presiding officer again until the Senate has relieved him of that by motion. Of course, the Senators from South Carolina can be relieved from the condition in which they are now, so far as recognition by the Chair is concerned, by a motion and by a majority vote of the Senate.

Thereupon, on motion of Mr. Blackburn, the Senate voted to allow the two Senators to be heard in order that they might purge themselves of contempt.

And Messrs. Tillman and McLaurin thereupon addressed the Senate apologizing for the occurrence.

On February 24,² a vote being taken on the pending bill, Mr. George Turner, of Washington, called attention to the fact that the name of neither Senator from South Carolina had been called.

The President pro tempore declined to entertain the question of order until the roll call had been completed and the result announced.

The result of the vote having been announced, Mr. Turner, rising to a question of privilege, stated that the State of South Carolina had been deprived of its rights under the Constitution, which declared that the Senate should "be composed of two Senators from each State," that "each Senator shall have one vote," and that "no State, without its consent, shall be deprived of its equal suffrage in the Senate."

In the course of the debate, Mr. Nelson W. Aldrich, of Rhode Island, read the following from Cushing:

The power to expel also includes in it a power to discharge a Member, for good cause, without inflicting upon him the censure and disgrace implied in the term "expulsion;" and this has accordingly been done, in some instances, by the House of Commons.

Analogous to the right of expulsion is that of suspending a Member from the exercise of his functions as such, for a longer or shorter period; which is a sentence of a milder character than the former, though attended with somewhat different effects; for during the suspension the electors are deprived of the services of their representative, without power to supply his place; but the rights of the electors are no more infringed by this proceeding than by an exercise of the power to imprison.

And Mr. Joseph W. Bailey, of Texas, denying the applicability of the law of Parliament, read the following from the American and English Encyclopedia of Law:

The same inherent power of punishing for contempt belongs to Parliament in England. The House of Commons has it, not because it is a representative body with legislative functions, but because it is a part of the high court of Parliament, the highest court in the realm.

A legislative assembly of an English colony, not being a judicial body, has no inherent right to punish for contempt, and, except in those cases where Parliament has invested them with it, they can not exercise it.

In the United States the judicial power is vested by the various constitutions in the courts created by the constitutions and such others as may be created. Neither Congress nor the State legislatures succeeded to those inherent and unlimited powers of punishing for contempt possessed by the English Parliament.

¹ William P. Frye, of Maine, President pro tempore.

² Record, pp. 2124–2130.

The Senate having passed to other business without disposing of the question, on February 27,¹ the President pro tempore made this statement to the Senate:

The Chair desires to say that on Monday last he requested the clerks not to call the names of the two Senators from South Carolina, they being by a resolution of the Senate in contempt of the body. On Tuesday he requested the clerks to read the names in the event there was a roll call. He did this not because he doubted in the least the propriety of the action he took on Monday. He did it because he recognized that it was a grave question, and he preferred to be in a position where, if it again arose, it could be by him submitted to the decision of the Senate and thus relieve the Chair from the responsibility.

On February 28, Mr. Julius C. Burrows, of Michigan, from the Committee on Privileges and Elections, made a report which, after reciting the circumstances of the encounter, proceeded:

We thus present to the Senate the entire record bearing upon this unfortunate occurrence, and no examination or investigation by your committee could possibly throw any additional light upon the transaction, which occurred in open session and in the presence of the membership of this body. That the conduct of the two Senators was an infringement of the privileges of the Senate, a violation of its rules, and derogatory to its high character, tending to bring the body itself into public contempt, can not be questioned or denied. Indeed, the Senate by a unanimous vote has already placed on record its condemnation of the Senators by declaring both guilty of contempt.

The majority of the committee are of the opinion that the legal effect of adjudging these Senators in contempt of the Senate was to suspend their functions as Senators, and that such a punishment for disorderly behavior is clearly within the power of the Senate, but the conclusion they have reached makes it unnecessary to discuss this question.

The offenses committed by the two Senators were not, in the opinion of a majority of the committee, of equal gravity. The charge made by Mr. Tillman had been once before in the Senate specifically denied in parliamentary language by Mr. McLaurin. The offense charged against Mr. McLaurin was among the most reprehensible a Senator could commit. He could not ignore it or fail to refute it and hope to be longer respected as either a man or a Senator.

Mr. McLaurin did not commence the encounter, but only stood in his place at his desk, where he was speaking, and resisted the attack that was made upon him.

In other words, his offense was confined to the use of unparliamentary language, for which he had unusual provocation.

Nevertheless, his offense was a violation of the rules of the Senate of so serious a character that, in the opinion of the committee, it should be condemned.

In the case of Mr. Tillman the record shows that the altercation was commenced by the charge he made against Mr. McLaurin. Such a charge is inexcusable, except in connection with a resolution to investigate. Mr. Tillman not only made the charge without any avowal of a purpose to investigate, but also disclaiming knowledge of evidence to establish the offense; and this he did after the charge had been specifically and unqualifiedly denied by Mr. McLaurin.

Such a charge under any circumstances would be resented by any man worthy to be a Senator, but, made as it was in this instance, its offensiveness was greatly intensified, and the result must have been foreseen by Mr. Tillman if he took any thought, as he should, of the consequences of his statements. This feature of his offense, coupled with the fact that he also commenced the encounter by quitting his seat some distance away from Mr. McLaurin, and, rushing violently upon him, struck him in the face, makes the case one of such exceptional misbehavior that a majority of the committee are of the opinion that his offense was of much greater gravity than that of Mr. McLaurin.

The penalty of a censure by the Senate, in the nature of things, must vary in actual severity in proportion to the public sense of the gravity of the offense of which the offender has been adjudged guilty. Therefore, notwithstanding the fact that, in the opinion of a majority of the committee, there is a difference in the gravity of the offenses under consideration, your committee are of the opinion that public good and the dignity of the Senate will be alike best promoted and protected, so far as this par-

¹ Record, p. 2195.

² Record, pp. 2203–2207.

ticular case is concerned, by imposing upon each Senator, by formal vote, the censure of the Senate for the offense by him committed; and therefore the committee recommends the adoption of the following resolution:

“Resolved, That it is the judgment of the Senate that the Senators from South Carolina, Benjamin R. Tillman and John L. McLaurin, for disorderly behavior and flagrant violation of the rules of the Senate during the open session of the Senate on the 22d day of February, instant, deserve the censure of the Senate, and they are hereby so censured for their breach of the privileges and dignity of this body, and from and after the adoption of this resolution the order adjudging them in contempt of the Senate shall be no longer in force and effect.”

A minority of the committee, Messrs. Joseph W. Bailey, of Texas, E. W. Pettus, of Alabama, Jo. C. S. Blackburn, of Kentucky, Fred. T. Dubois, of Idaho, and Murphy J. Foster, of Louisiana, presented the following dissenting views:

We dissent from so much of the report of the committee as asserts the power of the Senate to suspend a Senator and thus deprive a State of its vote, and so much as describes the offenses of the Senators as of different gravity; but we approve the resolution reported.

A portion of the majority, Messrs. L. E. McComas, of Maryland, Albert J. Beveridge, of Indiana, and J. C. Pritchard, of North Carolina, submitted views in favor of suspension of the two Senators. After discussing the power to punish generally, they submitted:

Since punishment for disorderly behavior may be inflicted by a majority vote in the Senate, what sorts of punishment may be imposed upon a Senator?

In *Kilbourn v. Thompson* (103 U. S., 189) Justice Miller says: “We see no reason to doubt that this punishment may in a proper case be imprisonment, and that it may be for refusal to obey some rule on that subject made by the House for the preservation of order.”

Later, in *In re Chapman* (166 U. S., 668), Chief Justice Fuller says of the Senate: “It necessarily possesses the inherent power of self-protection” (Ib., 671); “Congress could not divest itself or either of its Houses of the essential and inherent power to punish for contempt in cases to which the power of either House extended.”

While the Supreme Court has said that it does not concede that the Houses of Congress possess the general power of punishing for contempt analogous to that exercised by courts of justice, it had admitted that there are cases in which the Houses of Congress have such power of punishing for contempt, and points out the source of this power.

In *Kilbourn v. Thompson* (103 U.S., 201) the court said: “We may, perhaps, find some aid * * * if we can find out its source, and fortunately in this there is no difficulty. For, while the framers of the Constitution did not adopt the law and custom of the English Parliament as a whole, they did incorporate such parts of it and with it such privileges of Parliament as they thought proper to be applied to the two Houses of Congress.”

Among these privileges, says the court, is the right to make rules and to punish members for disorderly behavior. The Senate has not like power with Parliament in punishing citizens for contempt, but it has like power with Parliament in punishing Senators for contempt or for any disorderly behavior or for certain like offenses. Like Parliament, it may imprison or expel a member for offenses.”The suspension of members from the service of the House is another form of punishment.” (May’s Parliamentary Practice, 53.) This author gives instances of suspension in the seventeenth century and shows the frequent suspension of members under a standing order of the House of Commons, passed February 23, 1880.

Says Cushing, section 280: “Members may also be suspended by way of punishment, from their functions as such, either in whole or in part or for a limited time. This is a sentence of a milder character than expulsion.”

“During the suspension,” says Cushing, section 627, “the electors are deprived of the services of their representative without power to supply his place, but the rights of the electors are no more infringed by this proceeding than by an exercise of the power to imprison.”

The Senate may punish the Senators from South Carolina by fine, by reprimand, by imprisonment, by suspension by a majority vote, or by expulsion with the concurrence of two-thirds of its members.

The offense is well stated in the majority report. It is not grave enough to require expulsion. A reprimand would be too slight a punishment. The Senate by a yea-and-nay vote has unanimously resolved that the said Senators are in contempt. A reprimand is in effect only a more formal reiteration of that vote. It is not sufficiently severe upon consideration of the facts.

The resolution proposed by the committee was agreed to, yeas 54; nays 12.

The names of both Senators from South Carolina were called on this vote, but neither voted, Mr. McLaurin stating that for obvious reasons he would refrain from voting.

